IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: ORDER ::

Raj Kumar Vs. Indian Oil Corporation Limited & Anr.

S.B. CIVIL WRIT PETITION NO.983/2006.

Date of Order :: 1st June 2006

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. M.S. Singhvi, for the petitioner.
Mr. Rameshwar Chouhan for the respondents – Caveators.

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BY THE COURT:

Challenging the proceedings for cancellation of his retail outlet dealership, the petitioner has submitted this writ petition seeking the following reliefs:-

> "I. by an appropriate writ, order or direction, the order of cancellation of dealership of the petitioner may be placed on the record and the same may be declared illegal and be quashed with all consequential directions and the respondents may kindly be restrained from granting dealership to any other person.
>
> II. by an appropriate writ, order or direction, the impugned notices dated 6.12.2005 (Annexure-7) and 14.2.2006 (Annexure-9) respectively be declared illegal and be quashed and the respondents may kindly be

restrained from taking any action for canceling the dealership of the petitioner pursuant to the impugned notices with all consequential directions.

III. by an appropriate writ, order or direction, the respondents may be directed to act upon the letter of appointment of the petitioner as dealer of the respondent Corporation and to hand over the possession of petrol pump in question for the purpose of running it.

IV. by an appropriate writ, order or direction, the respondent Indian Oil Corporation may be directed to carry out the directions of this Hon'ble Court contained in the judgment dated 14.9.2005 in regard to the action to be taken against the officers of the Corporation who are found to be acting in flagrant violation of law

V. Any other appropriate order or direction, which this Hon'ble Court considers just and proper in the facts and circumstances of this case, may kindly be passed in favour of the petitioner.

VI. Costs of the writ petition may kindly be awarded to the petitioner."

Basic facts and surrounding circumstances may be summarised thus: According to the petitioner, he is a physically handicapped person and after obtaining a degree in Chemical Engineering, he came down to his village and started cultivating and earning from the agricultural land in Chak No. 15F Bada Second that was succeeded from his grand father by his father, brother and himself. An advertisement dated 18.02.2004 (Annex.1) was issued in newspaper inviting applications for grant of dealership for

retail outlets of the Indian Oil Corporaton Ltd. (hereinafter referred as 'the Corporation'/'IOC') including that at Bhagat Ki Kothi, Jodhpur (at Serial Number 148 in the advertisement) which was reserved for the candidates belonging to physically handicapped category. The petitioner applied for the same and was interviewed by the Selection Board; was declared successful and placed at Serial No.1 in the merit; was issued letter of intent (LOI) dated 18.11.2004 (Annex.2); and was appointed as dealer by the order dated 20.12.2004 (Annex.3). The licence in favour of the petitioner was issued by the District Supply Officer on 17.12.2004. Pursuant to LOI, the petitioner deposited a security of Rs.3 lacs with the Corporation (Annex.4).

In the meantime a civil suit for perpetual injunction alongwith an application for temporary injunction came to be filed by one M/s Dalle Khan and Sons claiming that the aforesaid outlet proposed to be granted in dealership (as advertised at Serial Number 148 in Annexure 1) cannot be identified with the petrol pump that was allotted to the plaintiff by IOC on 27.02.2004; and any attempt to grant dealership of the same pump to any other person was illegal. On his application, the petitioner was impleaded as party defendant in the said suit. While contesting, the Corporation took the stand that the outlet advertised at Serial Number 148 is the

same one which was in occupation of the plaintiff; and that the plaintiff was allotted the said outlet only on ad hoc basis for one year or till selected candidate was available. Accepting the submissions of the Corporation, the learned trial court proceeded to reject the application for temporary injunction moved by the said plaintiff by its order dated 16.12.2004 that was challenged before this Court in S.B.Civil Misc. Appeal No.1944/2004. This appeal was heard by the learned Single Judge of this Court on 07.09.2005 and the matter was posted for dictation of order on 09.09.2005 and then on 13.09.2005.

On 13.09.2005, an application under Order 11 Rule 12 read with Section 151 CPC was filed by the plaintiff-appellant wherein, inter alia, it was asserted that the dealership of the petitioner had been cancelled on 09.09.2005. This fact of cancellation of dealership of the petitioner was confirmed by the counsel appearing for the Corporation with the submission that he had received telephonic information regarding such cancellation. However, the petitioner submitted before the Court that he had not received any such order of cancellation of dealership.

After thorough consideration of all the facts and circumstances, in the Judgment dated 14.09.2005 (Annex.5), the learned Single Judge of this Court found the award of

dealership to the plaintiff, an existing dealer of IOC, wanting in transparency and highly questionable; and observed that the IOC choose to hide the facts. The timing of award of such ad hoc dealership and process of selection and filing of suit were also noticed. On facts, the contention of the plaintiff about two different outlets was rejected. The plaintiff also pressed in service the projected fact of cancellation of dealership of the present petitioner but this court observed that such cancellation was inconsequential and it was immaterial as to whom the pump was to be allotted. The appeal was dismissed with costs of Rs. 10,000/- to be deposited with the Legal Services Authority and with direction to the Corporation to make necessary enquiry into the matter of allotment of pump to the plaintiff.

The statement of fact about alleged cancellation of dealership of the petitioner was not dilated upon by the learned Single Judge in the aforesaid decision dated 14.09.2005, as the same had no material bearing on the subject matter of the said appeal. However, directly concerned as he was, the petitioner addressed a letter on 14.09.2005 to the General Manager of IOC about disclosure of such facts regarding cancellation of his dealership by the said plaintiff in the court and requested to be apprised of the correct facts. The petitioner also expressed in the said letter

dated 14.09.2005 (Annex. 6) that it did not appear proper that any proceedings against him be taken without notice and without hearing; and raised his concern that if the said information had any basis, how the plaintiff had been able to gather such information? The petitioner pointed out that he had received a general letter from the Company enquiring about the information supplied during interview that he had already forwarded; and requested for opportunity of reply before taking any proceedings against him.

Thereafter, notice dated 06.12.2005 (Annex.7) was issued by the respondent No.2 to the petitioner alleging that the petitioner had not made correct disclosure of the facts and the person placed at Serial No.2 in the panel prepared by the Dealer Selection Board made a complaint that the agriculture income shown by the petitioner was a false declaration inasmuch as the land does not stand in his name; and that an officer of IOC after conducting enquiry submitted a report wherein the complaint was found to be correct. The petitioner was informed that his act entitles the Corporation to withdraw the Letter of Intent and Letter of Appointment but before taking such extreme step he was being given seven days time to explain and show cause. The petitioner submitted an application dated 21.12.2005 (Annex.8) requesting the respondent No.2 to supply copy of the

complaint and the report of enquiry said have been conducted by the Corporation on the said complaint so as to enable him to submit a reply. The respondent No.2 by the communication dated 14.02.2006 (Annex.9) declined the request of the petitioner to supply copy of the complaint and enquiry report and, instead, directed the petitioner to submit reply within seven days.

The petitioner has challenged proceedings against him to be in colourable exercise of powers and has further submitted that merely because the land has not been recorded in his name does not debar him from having agriculture income. The petitioner has also submitted that despite clear directions of this Court for taking action against the erring officers for showing undue favour to M/s. Dalle Khan & Sons, no such action has been taken and on the contrary, the petitioner is sought to be proceeded against and somehow or the other, his dealership is sought to be cancelled. The petitioner has further submitted that once the statement was made before this Court that his dealership had been cancelled, the so-called process of affording an opportunity remains an empty formality and an eye wash and he cannot expect fair justice from the respondents. The petitioner has also questioned the procedure adopted by the respondents in not affording him opportunity of hearing while

holding enquiry on the complaint nor supplying the copies of complaint and enquiry report. The petitioner has, therefore, prayed for quashing of the proceedings with other consequential reliefs as noticed supra.

The respondents, IOC and its Senior Divisional Retail Sales Manager, have submitted a common reply to this writ petition. The claim of the petitioner of deriving any agriculture income has been put to contention and it has been averred that in the life time of his father, the son would not have any right, title or interest in the property of his grand father; and that the petitioner is a handicapped person and cannot cultivate the land. Other averments in the writ petition regarding invitation of applications, selection of the petitioner, issuance of letter of intent, the litigation taken up by M/s. Dalle Khan & Sons, and the orders passed in the said litigation including the order dated 14.09.2005 passed by this Court in CMA No.1944/2004 have been admitted.

However, in relation to the proceedings in the said appeal before this Court from 07.09.2005 onwards, culminating into the order dated 14.09.2005; and in relation to the assertion made before this Court by the said plaintiff and so also by the counsel appearing for the Corporation that the dealership of the petitioner had already been cancelled, it has been submitted that "due to some communication gap" such

statement was made by the counsel for the Corporation before this Court that letter of authorisation granted to the petitioner had been cancelled. It has been averred that an information was sent on 02.09.2005 from Jaipur about the complaint of Mohd. Iqbal of the petitioner having submitted false information; and after investigation, it was found that the petitioner had submitted wrong facts and, therefore, necessary action was directed to be taken as per the policy guidelines; but this fact was "not properly submitted by the counsel" of the Corporation to this Court on 14.09.2005; and on that date cancellation of LOI of the petitioner was in process. The averments aforesaid, having a direct bearing on the subject matter of this writ petition, are reproduced hereunder:-

> "That in reply to averments contained in para no.14 of the writ petition, it is humbly submitted that due to some communcation gap, counsel for the IOC submitted to the Hon'ble Court that letter of authorization granted to the petitioner has cancelled. In fact CRSM, RSO, Jaipur informed to the respondent vide letter dated 02.09.2005 that one Mohd. Iqbal complained on 17.12.2004 against the petitioner citing submission of false information regarding income and properties and after investigation it found that the petitioner had submitted wrong facts and advice to the respondent take necessary action as per policy guidelines. A copy of this letter is annexed herewith and marked Annexure-R/1. This fact was not properly submitted by the counsel for the IOC to the Hon'ble Court on 14.09.2005. In fact on that day cancellation of LOI of the petitioner was in process. No wrong fact was submitted by the IOC counsel before Hon'ble Court."

While maintaining that the petitioner has submitted false information in support of his income, it has been stated in para 16 of the reply that on the basis of complaint and enquiry, the respondents cancelled the selection of the petitioner in the following words:-

> "The petitioner wrongly submitted sources of income by filing false information in application and also submitted affidavit in support of application. The petitioner authorized to the respondent that on any false information given by him, respondent will be free to cancel the selection. The petitioner submitted false affidavit in support of his income. On the basis of complaint and enquiry, the respondent canceled the selection of the petitioner."

Regarding the averments in para 19 of the writ petition that despite clear directions for taking action against the erring officers the respondents have not taken any such action and on the contrary the petitioner's dealership is sought to be cancelled, it has been replied that the directions given by this Court have been obeyed by the officers nominated by the letter dated 10.10.2005 on 26.12.2005. This response of the respondent-Corporation to the directions of this Court in judgment dated 14.09.2005 by way of a so-called investigation report dated 26.12.2005 has been

placed on record as Annexure R/3. It has been maintained in the said report about ad hoc appointment of M/s. Dalle Khan & Sons that the same was totally in line with policy of the Corporation and all the guidelines of the policy had been followed with all transparency. It has been observed that there had been causal manner handling of the papers for the purpose of counter signatures of such ad hoc arrangement; then the said Investigating Officers have suggested that there was some confusion about ad hoc dealership and regular dealership; and then have shifted the entire burden on the counsel representing the Corporation for having not placed the facts and policy before the Court. The said Investigating Officers in their conclusions have stated thus,-

> "In view of above investigations it is concluded that IOC officials have followed the policy in TOTO and in transparent manner in respect of selection of adhoc RO dealership for Bhagat Ki Kothi RO and obtained NOC for the same of their own but our lawyers at Jodhur have failed in putting up the facts and policies of the Corporation before the court."

It has been reiterated in reply to the grounds that the statement was made before this Court due to some communication gap and at that time cancellation of dealership was in process. The respondents have averred that the petitioner has been issued show cause notice on

06.12.2005 but he had failed to submit any reply/justification and by the letter dated 14.02.2006 the petitioner was again asked to submit reply/justification in response to the show cause notice; and that the copies of complaint and enquiry report were not required to be supplied to the petitioner.

During the course of hearing of this writ petition as it was suggested on behalf of the respondent-Corporation that the statement came to be made before this Court while passing of the order dated 14.09.2005 about cancellation of dealership because of some communication gap, learned counsel for the respondents was specifically put to question about the person concerned who entered into communication with the counsel representing IOC and the date and mode of receipt of communication dated 02.09.2005 from Jaipur. Learned counsel for the respondents thereafter submitted a so-called reply to the query of this Court to the effect that the said communication was received on 05.09.2005 and the Senior Divisional Retail Sales Manager informed the IOC counsel on 09.09.2005 about the same.

Having heard learned counsel for the parties and having examined the material placed on record, this Court is clearly of opinion that all the proceedings in this matter by the respondents are clearly in colourable exercise of powers and in three fold attempts: (i) to justify ad hoc appointment of M/s.

Dalle Khan & Sons that has been strongly pronounced against by this Court; (ii) to save the concerned officers from the fall out of the judgment dated 14.09.2005; and (iii) to somehow avoid handing over the outlet to the petitioner, obviously to the advantage of other existing dealers. The action contemplated against the petitioner, at least in the present manner and form, is nothing less than mala fide and deserves to be annulled.

A recapitulation of chronology of events makes it clear that though the pump in question was advertised and though the petitioner was selected to be appointed as dealer and LOI was issued to him as back as on 18.11.2004 and appointment order was also issued on 20.12.2004 and the petitioner completed all the formalities and deposited security of Rs.3 lacs, the outlet was not handed over to him in view of the litigation taken up by M/s. Dalle Khan & Sons.

The subject of the said litigation and conduct of respective parties and findings of this Court in CMA No.1944/2004 need to be noticed in some more detail. It was precisely contended by the plaintiff that the outlet that was allotted to it by IOC on 27.02.2004 could not be offered for allotment to other person; and that the pump advertised by IOC at Serial No.148 could not be identified with the petrol pump of the plaintiff. It was maintained that the plaintiff was

invited and he helped the respondent-IOC in getting NOC from the Collector and it was the case of the plaintiff that he was invited by IOC Officers on 22.02.2004 and was asked to submit application for allotment; and the application submitted on 27.02.2004 was considered and granted on the same day and on 05.03.2004 a letter was issued by IOC to the District Supply Officer for issuing trading licence in favour of the plaintiff. It was also contended that the plaintiff has reasonable expectation to continue to run his petrol pump. It was maintained by the respondent-IOC that the pump advertised at Serial No.148 was the same petrol pump which was then in occupation of the plaintiff; that the said pump was allotted to the plaintiff only on ad hoc basis on the clear understanding that this allotment was for a period of one year or till selected candidate was available and, therefore, he was bound to deliver possession of the pump to the respondent-IOC. It was maintained qua the present petitioner that he had been selected and given LOI. The trial court dismissed the application for temporary injunction and hence the plaintiff was in appeal before this Court.

In appeal it was contended by the plaintiff that the allotment of ad hoc pump for a limited period till the process of final selection is complete is the mode of allotment of a petrol pump and the IOC is following such procedure. It was also

urged that the two outlets, i.e. the one allotted to the plaintiff and the one advertised, were different because if the plaintiff's allotted pump was included in the proposal for allotment, then there was no reason for such allotment to the plaintiff just after publishing the notice inviting applications. It was also suggested that the plaintiff was instigated to submit application and was asked to carry out the work for IOC and he obtained NOC from the Collector and thus he had legitimate expectation of renewal of licence of pump for two years. Such contentions were countered on behalf of IOC with the submissions that the pump in question was "company owned" petrol pump; that it was reserved for handicapped person; that there was possibility of taking some time in completion of selection process; and in order to take benefit of investment and to provide facility to the public, the pump was allotted to the plaintiff absolutely on ad hoc/temporary basis. It was maintained that the plaintiff submitted written undertaking on stamp paper that such arrangement was only ad hoc and he would hand over the pump to IOC within seven days from the receipt of notice and that the plaintiff had no right to continue with running of the pump. It was also maintained by the respondent-IOC that in pursuance of advertisement dated 18.02.2004 the process had been completed and the respondent No.2 (the present petitioner)

was selected after due process and he was entitled to have the benefits of the pump. The present petitioner also joined the issue in appeal refuting the claim of the plaintiff and it was contended that on the own showing of the plaintiff, he had obtained petrol pump for a consideration which was not lawful as the IOC could not allot a pump for consideration of service rendered by anybody.

The learned Single Judge of this Court while deciding the said appeal by the judgment dated 14.09.2005 (Annex.5) has pointed out that the matter was heard on 07.09.2005 and was posted for dictation of order on 09.09.2005 and then on 13.09.2005. On this date of 13.09.2005, an application was filed by the plaintiff stating that he came to know on 09.09.2005 that dealership of the respondent No.2 (the present petitioner) had already been cancelled by IOC and, therefore, he would have no locus standi in the appeal as well as in the suit. The appellant-plaintiff also submitted that the details of survey and location reports were not produced in relation to grant of ad hoc dealership to him and it was prayed that the Oil Company be directed to produce the order cancelling dealership of the respondent No.2 and the original proceedings for granting dealership to the plaintiff-appellant. No reply to the application was submitted but a categoric statement was made before this Court on behalf of the

Corporation, on the basis of instructions supplied, that the authorisation granted to respondent No.2 had been cancelled. The respondent No.2, i.e. the present petitioner, on the other hand submitted that he had not received any cancellation order. Such statements as recorded in the judgment dated 14.09.2005 read thus,-

> "However, learned counsel Mr. J.P. Joshi appearing for the respondent no.1 submits that as per the telephonic information received by him on 9.9.2005, the respondent no.1 has cancelled the letter of authorisation granted to respondent no.2
> Learned counsel for the respondent no.2 submits that he has not received any cancellation order yet."

The learned Single Judge considered the entire matter in thorough detail and noticed the facts that the plaintiff was an existing dealer of IOC and yet such fact was sought to be put in obscurity by oblique statement that there was no ad hoc dealership or "Company Owned Company Operated (COCO) dealership in his favour, though at the same time, the plaintiff was said to be having highest sale of diesel and petrol per month. This Court found,-

> "Therefore, it is clear that the plaintiff, instead of mentioning that he is a dealer or having a dealership license from IOC product only disclosed its business and stated that it is not having adhoc dealership or COCO dealership. The IOC/IOC officers were knowing that the

> plaintiff is a big dealer of IOC's product and still in violation of the conditions for allotment of the petrol pump published by them, the petrol pump was allotted to the plaintiff."

The justification for allotting pump with reference to the possibility of some time being taken in selection of the dealer; and the suggestion of the plaintiff that he worked towards obtaining NOC for IOC were also considered and put to question; and this Court observed,-

> "As stated earlier, according to the petitioner itself, the petrol pump was obtained by the plaintiff for consideration. The stand taken by the plaintiff requires an investigation by the IOC itself that whether the poor IOC was so helpless that they had to take help from a trader of the city of Jodhpur for getting NOC from the District Collector, Jodhpur for opening the retail outlet."

This Court also considered the manner in which the pump was allotted to the plaintiff and the discrepancy in documentation. Thereafter, it was noticed that the pump was taken by the plaintiff after it was advertised in the month of February, 2004 and the plaintiff filed suit for injunction on 04.11.2004 but during this period, interview took place and select list was declared on 22.10.2004. This Court found that the plaintiff has failed to establish that there were two different petrol pumps, as alleged. So far the alleged cancellation of

dealership of the present petitioner was concerned, this Court was of the view that such cancellation would be of no consequence as it was immaterial as to whom the pump was allotted. The appeal filed by the appellant-plaintiff was dismissed with the following observations:-

> "In view of the above, the appeal of the appellant deserves to be dismissed but with direction to the respondent IOC to inquire into the matter of allotment of petrol pump to the plaintiff on adhoc basis and if it is found that the license to run petrol pump was obtained by the plaintiff, as stated by him, for consideration which is impermissible and the petrol pump was otherwise allotted in violation to law laid down by the Hon'ble Supreme Court in the case of Common Cause (supra), stern action be taken against the guilty IOC officers."

Costs of Rs.10,000/- were imposed on the plaintiff to be deposited with the Legal Services Authority. The claim of the present petitioner for exemplary costs was rejected looking to the fact that according to the IOC itself, his licence had been cancelled and he was left to take appropriate steps for damages before appropriate forum in accordance with law.

So much of the anxiety of this Court expressed in the judgment dated 14.09.2005 for maintaining transparency in the matter of award of dealership has been responded with a thoroughly inept so-called investigation report dated 26.12.2005 by the respondent-IOC shifting the burden firstly,

on a pretended 'confusion'; and secondly, on the counsel representing them with the suggestion that their counsel failed in putting up the facts and policies before the court. It has not been pointed out that if at all it were so, as to what steps were taken by IOC to bring the so-called correct facts to the notice of the court? In fact, the anguish of this court that choosing of the plaintiff alone for such ad hoc dealership did not sound well with the Company supposed to maintain transparency has been shown scant respect. With mere repetition of the phrase that everything was done ‘strictly’ in accordance with the policy, the so called investigating team had the audacity to suggest that some ‘confusion’ has prevailed between regular selection of RO dealership and appointment of RO dealership on ad hoc basis and their lawyers could not present the fact and policies else the remarks would not have come from this court. There is a reference to some policies dated 24.03.2003 and 04.04.2003 but neither their contents have been placed on record nor the observations made and questions posed by this court have been attended to or answered. The report is absurd to the hilt and sounds contemptuous. There was no confusion whatsoever with this court. It shall be worthwhile to put the remarks of this court and the response of the so called investigating team in juxtaposition thus,-

Observations of this court (at page 19 of the Judgment dated 14.09.2005)	Observations of the Investigating team
The justification given for allotting the petrol pump for short period on ad hoc basis is that in the process of selection of dealer, there was possibility of taking some time and in view of the above fact, the petrol pump was allotted to the plaintiff. Whether this offer was given to other dealers also to compete with the plaintiff or they were not eligible because other dealer did not work for the IOC officers and thereby they incurred disqualification	It seems **confusion** has prevailed between regular selection of RO dealership and appointment of RO dealership on adhoc basis. It seems our lawyers at Jodhpur have **also** not been able to put the facts and policies of the Corporation in front of the court during various hearings. Had the Corporation's policy and facts been presented in the court remarks by the court against IOC officials would have been avoided.

An order passed by a court of law cannot be dealt with and responded in such a mechanical and perfunctory manner nor could be permitted to be simply swept under the carpet. Moreover, the impunity with which the entire burden has been attempted to be shifted on their counsel by IOC cannot be accepted. A party to the litigation, that too a Petroleum Company, in order to avoid attending to its own follies cannot simply make the counsel a scapegoat and remain rest contended as if it was not to answer for any of its acts and omissions. The report of IOC (Annex.R/3) strengthens the prima facie impression of this court that IOC has much to hide about the said exercise of awarding ad hoc

dealership to the said plaintiff and for this purpose they could go to the extent of suggesting some confusion with this court, even in the teeth of unambiguous and explicit observations. The said report being mere eyewash deserves to be, and is rejected. The contention of IOC that it had complied with the requirements of the order dated 14.09.2005 are absolutely incorrect. However, this aspect is not been further dilated upon in this case as the said plaintiff is not before this court, nor that ad hoc appointment as such is the subject matter of this writ petition and the matter is proposed to be sent back to the Chairman and the Petroleum Ministry as already directed in the order dated 14.09.2005.

The facts and aspects aforesaid were required to be dealt with for two main reasons: one, because the IOC attempted to suggest to this court that the order dated 14.09.2005 had been complied with; and secondly, to notice the background facts and the surrounding circumstances in relation to the impugned proceedings against the petitioner

Reverting to the case of the present petitioner it is at once noticed that when it came to the question of a specific statement of fact made before this Court as recorded in the judgment dated 14.09.2005 that dealership of the petitioner had already been cancelled, again the burden has been sought to be shifted firstly on the counsel and secondly to the

aspect of so-called 'communication gap'. As the statement about communication gap was itself vague and shrouded in obscurity, learned counsel appearing for IOC was put to specific question about this so-called "communication" which suffered from a malaise called "gap"; and the response has been put on record in the following words:-

> "In compliance of Hon'ble Court order dated 24.02.2006, it is submitted that Annexure R/1 dated 02.09.2005 received by the respondent office on 05.09.2005 by currier, because office were not opened 03.09.2005 and 04.09.2005 due to holiday of Saturday and Sunday.
>
> That Shri Sanjeev Kakkar, Senior Divisional. Retail Sale Manager informed to IOC counsel on 09.09.2005 about letter Annexure R/1."

It is apparent that the letter dated 02.09.2005 was definitely read by the said Senior Divisional Retail Sales Manager(SDRSM) of IOC while extending instructions to the counsel for IOC. The letter had admittedly been received at Jodhpur on 05.09.2005 and yet the communication to the lawyer in the same City of Jodhpur was chosen to be made by way of telephone on 09.09.2005. The said letter dated 02.09.2005 in its entirety reads as under:-

> **"Sub: COMPLAINT AGAINST SELECTION OF CANDIDATE FOR LOCTION BHAGAT KI KOTHI, JODHPUR, CAT PH**
>
> Sh. Mohammed Iqbal, S/O Alladeen Khan, empanelled candidate No.2 had on 17.12.04 complained against selection of empanelled candidate No.1 Sh. Rajkumar S/O Govind Ram, citing submission of false information regarding income and properties by him.
>
> The complaint has been got investigated as per policy. Based on the findings of the investigation, the complaint has been established implying submission of wrong facts by Sh. Rajkumar, empanelled candidate No.1, also the LOI holder.
>
> You are therefore advised to take necessary action as per policy guidelines on selection of dealers, in accordance."

Though the aforesaid letter dated 02.09.2005 was not placed before the court at the time of said judgment dated 14.09.2005; but on the other hand a specific statement was permitted to be made before the court that the authorisation of the petitioner had already been cancelled. It appears that the respondent IOC and its officers had already concluded that the cancellation of dealership of the petitioner was a fait accompli; there was no communication gap as alleged and the telephonic communication to the counsel on 09.09.2005 was nothing except as it was stated before this Court. The pretence of communication gap has been put forward only to defend this writ petition. Other way round, if it were truly a

case of communication error or gap, the matter is moreover serious because then the respondent SDRSM intentionally kept the things in obscurity leading their counsel to make statement before the court endorsing the statement made by the said plaintiff about the dealership of the petitioner having already been cancelled. This Court is constrained to observe that the respondent-IOC and their officers have thoroughly been unfair to the petitioner, ungracious to their counsel, and discourteous to this Court.

On the chronology of facts and the surrounding circumstances, this Court is satisfied that the proceedings proposed against the petitioner, in the present manner and form are nothing except a formality and have been adopted merely to supply justification to a decision for cancellation of dealership of the petitioner that has already been arrived at. Para 16 of the reply in the present case as noticed hereinbefore, has given out, may be unwittingly, the said conclusion already conceived by the respondents. The finding against the petitioner having already been concluded is spelt out in the letter dated 02.09.2005 itself.

The timing of filing of the said suit only when dealership of the petitioner was being finalised, the timing of the complaint on 17.12.2004 against the petitioner only a day after rejection of the temporary injunction application by the trial

court, the timing of addressing of the communication dated 02.09.2005 and the timing and manner in which the statement was made before this court by the said plaintiff, and was got endorsed by IOC from their counsel, all make it clear that proceedings are not bona fide and so far the respondents are concerned, cancellation of dealership of the petitioner remains a conclusion foregone. They cannot now be left pretending that they are still affording an opportunity to the petitioner to show cause and then a decision is to be arrived at.

The proceedings against the petitioner suffer from yet further shortcoming of his having not even been supplied with copy of so-called complaint and copy of so-called investigation report. That the entire exercise is a farce and suffers from want of adherence to the basic principles of natural justice is highlighted from the letter dated 14.02.2006 (Annex. 9) from the respondent No. 2 denying supply of the copies of the complaint and the alleged enquiry report while stating,-

> "Please note that is not necessary for the Corporation to supply a copy of complaint submitted by Shri Mohammed Iqbal or the report prepared by the Enquiry Officer confirming the allegation made in the said complaint."

Even on facts, this Court is prima facie of opinion that the proceedings against the petitioner do not appear to be well founded. The candidate placed below in merit made a complaint only a day after temporary injunction application in the said suit was dismissed on 16.12.2004 and though the contents of such complaint are not known, the same relates to income and properties of the petitioner whereas it appears from the information given by the petitioner (Annex.R/2) that he had already stated that the agricultural land is in his father's name. The so-called investigation allegedly made at the back of the petitioner seems to have been directed basically to all such facts which were already divulged by the petitioner before interview and it cannot be said to be a case of fundamental lack of eligibility in the petitioner who had already been issued LOI and LOA. In such a scenario where genuineness and merits of the complaint are seriously in doubt, the respondents do not appear to be fair in already concluding on the basis of their so-called investigation that the petitioner had stated wrong facts. In the overall circumstances of the case, the impugned action does not appear to be bona fide and the impugned notices, in the backdrop of the facts and circumstances, cannot be sustained and deserve to be quashed.

It is noticed that the petitioner despite having been offered LOI on 18.11.2004 and having been appointed as dealer "welcoming" him to Indian Oil Family as back as on 20.12.2004, stands deprived of the outlet. The result further is that an outlet otherwise suggested by the respondent-IOC to be reserved for a physically handicapped person is yet to go a genuine physically handicapped person and the acts and omissions of the respondent-IOC turn out to be full of blemishes and opposed to the requirements of transparency and fair play. The petitioner ought to be handed over the outlet forthwith. However, in the interest of justice, it is considered proper to leave it free thereafter for the Chairman of IOC to consider if any enquiry is to be made qua the petitioner, and if at all to be made, having regard to the circumstances of the case, it is appropriate that such enquiry should be made by the learned Chairman or his nominee and none else.

The report dated 26.12.2005 (Annex.R/3) as made by the so-called investigating team is a ruse, and has been rejected supra. It is noticed that while passing the order dated 14.09.2005 this Court had already directed a copy of the order be sent to the Chairman of the Oil Company and Petroleum Ministry for appropriate action. Therefore, it is considered appropriate to send copies of both the order dated

14.09.2005 and this order, to the Chairman and to the Petroleum Ministry for appropriate action.

As a result of the aforesaid, this writ petition succeeds and is allowed. The impugned show cause notices dated 06.12.2005 (Annex.7) and 14.02.2006 (Annex.9) are quashed; and the entire proceedings against the petitioner for withdrawal of letter of appointment are quashed and set aside. It shall be required of the respondents to proceed in conformity with the letter of appointment already issued to the petitioner and to hand over the outlet to the petitioner within thirty days from today, subject of course to fulfillment of other requirements of law and contract. Thereafter, if at all any proceedings are considered expedient, the same may be taken by the Chairman of IOC with due adherence to the principles of natural justice. The petitioner shall be entitled to the costs of this writ petition quantified at Rs.5,000/-.

(DINESH MAHESHWARI),J.

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